

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JASON E.,

Plaintiff,

-v-

ANDREW SAUL,
COMMISSIONER OF
SOCIAL SECURITY,

Defendant.

6:20-cv-06189-MWP

ORDER

Plaintiff filed an action seeking judicial review of the decision of the Commissioner of Social Security, which denied his claim for Disability Income Benefits, pursuant to 42 U.S.C. § 405(g). Both parties filed Motions for Judgment on the Pleadings, and oral argument was held on May 20, 2021.

This Court has reviewed the parties' competing motions together with their respective memoranda of law, and the arguments of Justin M. Goldstein, Esq. of the Law Offices of Kenneth Hiller, PLLC, attorney of record for Plaintiff, and Brittany J. Gigliotti, Esq., Special Assistant United States Attorney for the Western District of New York, attorney of record for Defendant. Now, upon all pleadings, the administrative record, the parties' memoranda of law, and the arguments of the parties,

It is ORDERED and ADJUDGED, for the reasons stated in open Court at the oral argument of this matter on May 20, 2021, pursuant to 28 U.S.C. § 636(c) and the parties' consent, and consistent with this Court's ruling from the bench following oral argument,

the decision of Defendant Commissioner is Affirmed; and it is further

ORDERED and ADJUDGED, that Plaintiff's motion for judgment on the pleadings (ECF No. 11) is Denied; and it is further

ORDERED and ADJUDGED that the transcript of the Court's Decision shall be filed, and the Court Clerk shall issue Judgment in favor of the Commissioner and close this case.

SO ORDERED.



MARK W. PEDERSEN
UNITED STATES MAGISTRATE JUDGE

DATED: June 22, 2021
Rochester, New York

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF NEW YORK
3
4

5 - - - - - X
6 JASON MICHAEL ELEY,) 20CV6189
7 Claimant)
8 vs.

9 Rochester, New York
10 COMMISSIONER OF SOCIAL SECURITY, May 20, 2021
11 Respondent. 2:00 p.m.
12 - - - - - X

13 **DECISION**

14 **Transcribed from an audio recording**

15 **All parties appearing via Zoom for Government Platform**

16
17 TRANSCRIPT OF PROCEEDINGS
18 BEFORE THE HONORABLE MARK W. PEDERSEN
19 UNITED STATES MAGISTRATE JUDGE
20

21
22 JUSTIN M. GOLDSTEIN, ESQ.
23 Law Offices of Kenneth Hiller, PLLC
24 6000 North Bailey Avenue, Suite 1A
25 Amherst, New York 14226

BRITTANY JOHANNA GIGLIOTTI, ESQ.
Social Security Administration
300 Spring Garden Street, Suite 600
Philadelphia, Pennsylvania 19123

COURT REPORTER: Karen J. Clark, Official Court Reporter
Karenclark1013@AOL.com
100 State Street
Rochester, New York 14614

1 J. ELEY VS. COMMISSIONER OF SOCIAL SECURITY

2 P R O C E E D I N G

3 * * *

4 (Whereupon, the proceeding began at 2:00
p.m. and arguments were made by counsel on the record.)

5 (TIME 2:52 P.M)

6
14:14:22 7 MAGISTRATE JUDGE PEDERSEN: Back on the
14:14:23 8 record, Mr. Boch?

14:14:24 9 THE CLERK: We are, Judge.

14:14:26 10 MAGISTRATE JUDGE PEDERSEN: I'm ready to
14:14:27 11 render my decision. Title 405(g) grants jurisdiction to
17:06:13 12 district courts to hear claims based on the denial of
17:06:16 13 Social Security benefits. Section 405(g) provides that
17:06:30 14 the district court shall have the power to enter, upon
17:06:33 15 the pleadings and transcript of the record, a judgment
17:06:35 16 affirming, modifying or reversing the decision of Social
17:06:39 17 Security with or without remanding the cause for a
17:06:42 18 rehearing. It directs that when considering claims, a
17:06:45 19 Court must accept the findings of fact made by the
17:06:48 20 Commissioner provided that such findings are supported
17:06:51 21 by substantial evidence in the record. Substantial
17:06:53 22 evidence is defined as more than a mere scintilla. It
17:06:58 23 means such relevant evidence as a reasonable mind might
17:07:01 24 accept as adequate to support a conclusion. To
17:07:04 25 determine whether substantial evidence supports the

1 J. ELEY VS. COMMISSIONER OF SOCIAL SECURITY

17:07:06 2 Commissioner's findings, the Court must examine the
17:07:10 3 entire record, including contradictory evidence and
17:07:13 4 evidence from which conflicting inferences can be drawn.
17:07:17 5 Section 405(g) limits the scope of the Court's review to
17:07:57 6 two inquiries: Whether the Commissioner's findings were
17:08:01 7 supported by substantial evidence in the record; and
17:08:03 8 whether the Commissioner's conclusions are based on an
17:08:06 9 erroneous legal standard.

17:08:08 10 A person is disabled for purposes of SSI and
17:08:11 11 disability benefits if he or she is unable to engage in
17:08:15 12 any substantial gainful activity by reason of any
17:08:19 13 medically determinable physical or mental impairment
17:08:22 14 which can be expected to result in death or which has
17:08:25 15 lasted or can be expected to last for a continuous
17:08:28 16 period of not less than 12 months.

17:08:30 17 In assessing whether a claimant is disabled,
17:08:34 18 the ALJ must employ a five-step sequential analysis as
17:08:48 19 described in *Berry v. Schweiker*, 675 F. 2d 474m, Second
17:08:54 20 Circuit, 1982. The claimant bears the burden of proving
17:09:00 21 his or her claims at steps one through four, and at step
17:09:06 22 five, the burden shifts to the Commissioner to show
17:09:15 23 there is other gainful work in the national economy
17:09:19 24 which the claimant could perform.

14:18:17 25 There are essentially four different areas

1 J. ELEY VS. COMMISSIONER OF SOCIAL SECURITY

14:18:19 2 in which the Plaintiff alleges the ALJ here erred. The
14:18:23 3 first one we discussed was his failure to specifically
14:18:26 4 address the C and P, that is, compensation and pension
14:18:31 5 examination from March 24, 2016 at page 1783 through
14:18:35 6 page 1794 of the record. Under 20 CFR 404.1520(c), the
14:18:49 7 ALJ is required to articulate in his determination or
14:18:54 8 decision how persuasive he found all of the medical
14:18:57 9 opinions in the record. This particular one was not
14:19:02 10 addressed. The Commissioner urges me to find harmless
14:19:08 11 error in lack of addressing because this particular
14:19:10 12 record is consistent with the ALJ's determination that
14:19:14 13 only moderate limitations exist for this particular
14:19:19 14 claimant. The Plaintiff argued that harmless error
14:19:26 15 analysis is not applicable in medical opinions, and
14:19:30 16 cited, among other cases, the case of *Joseph M v. The*
14:19:34 17 *Commissioner*, at 2021 Westlaw 841403. And at page 14 of
14:19:41 18 that case, I found that the district court judge
14:19:43 19 reviewing the ALJ's decision there did apply harmless
14:19:47 20 error analysis and found that the error there was not
14:19:51 21 harmless because the report that the ALJ only gave
14:19:54 22 slight weight to was far more disabling than the other
14:20:01 23 reports the ALJ relied on. I do find that I can apply a
14:20:10 24 harmless error analysis here and determine that the
14:20:13 25 ALJ's lack of addressing this report is harmless in that

1 J. ELEY VS. COMMISSIONER OF SOCIAL SECURITY

14:20:18 2 this report contains evidence or opinions that are
14:20:23 3 consistent with the opinions the ALJ did rely on in his
14:20:28 4 ultimate determination that only moderate limitations
14:20:31 5 faced this claimant.

14:20:33 6 Next, the Plaintiff addresses what he
14:20:36 7 referred to as a gap in the ALJ's discussion of the
14:20:38 8 medical records from 2017 through 2018. He actually
14:20:43 9 referred to 2015 through 2019. The period of disability
14:20:48 10 here starts in September of 2016, and runs through to
14:20:52 11 2019. The Commissioner pointed out at page 16 of the
14:20:57 12 record that the ALJ did refer to two different exhibits
14:21:03 13 11 F and 18 F in which the ALJ or which contains records
14:21:09 14 that go through that period of time. However, the
14:21:14 15 Plaintiff pointed out that the ALJ's references to those
14:21:18 16 two exhibits were to specific pages in those exhibits
14:21:21 17 dealing with records from 2018 and 2019, specifically.
14:21:26 18 I do note, however, that on page 17 of his decision, he
14:21:30 19 states "I have considered all of the medical evidence of
14:21:36 20 record and treatment notes received during the
14:21:38 21 development of the record in conjunction with the
14:21:40 22 claimant's testimony at the hearing and concludes the
14:21:43 23 claimant's impairments considered singularly and in
14:21:47 24 combination result of the residual functional capacity
14:21:52 25 identified above." Since the standard of evidence in

1 J. ELEY VS. COMMISSIONER OF SOCIAL SECURITY

14:21:55 2 this kind of a review is so low, I find that the two
14:22:00 3 references in the decision adequately address the
14:22:03 4 records from those dates.

14:22:06 5 Next, the Petitioner points out that the ALJ
14:22:10 6 did not consider a closed period of disability running
14:22:13 7 from September of 2016 for at least a year after that.
14:22:18 8 And the Commissioner points out at page 16 of the ALJ's
14:22:22 9 decision that the Commissioner states, "Overall, the
14:22:28 10 claimant is affected by moderate social and adaptive
14:22:32 11 deficits caused by PTSD. I acknowledge that the
14:22:47 12 claimant experienced a difficult period with increased
14:22:59 13 symptoms in 2016 in context of divorce, hospitalizations
14:23:03 14 and a period of homelessness. However, this level of
14:23:06 15 dysfunction does not appear to have persisted beyond 12
14:23:11 16 months, and is, therefore, not a reliable indicator of
14:23:25 17 the claimant's base line level of functioning during the
14:23:37 18 period at issue." The ALJ's reference to 12 months, I
14:23:40 19 find, is more than a mere scintilla of evidence
14:23:43 20 indicating that he did consider a closed period and
14:23:46 21 rejected it.

14:23:47 22 Finally, the Plaintiff points out that the
14:23:51 23 ALJ did not adequately analyze the opinion of Agnus R.
14:23:58 24 Jonas, J-o-n-a-s, a psychiatrist on page 16 of the ALJ's
14:24:02 25 decision. He points out that only near the bottom of

1 J. ELEY VS. COMMISSIONER OF SOCIAL SECURITY

14:24:06 2 that paragraph and the top of the page does the ALJ
14:24:11 3 address what Dr. Jonas found was a marked limitation
14:24:14 4 regulating emotions, controlling behavior and
14:24:17 5 maintaining well-being. There is no evidence of
14:24:30 6 limitation with maintaining personal hygiene and
14:24:33 7 appropriate attire, awareness of normal hazards and
14:24:37 8 taking appropriate precautions. The Plaintiff points
14:24:49 9 out that these are simply summarizations of what Dr.
14:24:56 10 Jonas found and does not address Dr. Jonas's opinion,
14:24:59 11 except in this or these sentences, Dr. Jonas's opinion
14:25:04 12 is partially persuasive, although there is little
14:25:07 13 evidence from marked limitation regulating emotions and
14:25:10 14 behavior, especially in more recent treatment notes.
14:25:14 15 Her benign mental status exam results and mild to
14:25:28 16 moderate limitations are otherwise generally consistent
14:25:31 17 with the record. And I note that under the new
14:25:33 18 regulation concerning medical records, which is 20 CFR
14:25:39 19 404.1520(c), under subdivision (b)(2), the most
14:25:47 20 important factors for the ALJ to consider are
14:25:52 21 supportability and consistency. And I think the ALJ
14:25:57 22 adequately addressed those issues. Therefore, overall,
14:26:01 23 I find that the ALJ's RFC determination and decision
14:26:05 24 concerning disability is supported by substantial
14:26:07 25 evidence in the record, and I grant the ALJ's -- the

1 J. ELEY VS. COMMISSIONER OF SOCIAL SECURITY

14:26:10 2 Commissioner's Motion for Judgment on the Pleadings and
14:26:13 3 deny the Plaintiff's Motion for Judgment on the
14:26:16 4 Pleadings. The Commissioner will settle an order with
14:26:19 5 Plaintiff's counsel and attach and reference a
14:26:21 6 transcript of this decision. Thank you very much
14:26:25 7 counsel.

14:26:28 8 MS. GIGLIOTTI: Thank you, your Honor.

9 * * *

10 CERTIFICATE OF REPORTER

11
12 I certify that the foregoing is a correct transcript
13 of the record to the best of my ability of proceedings
14 transcribed from the audio in the above-entitled matter.

15
16 S/ Karen J. Clark, RPR

17 Official Court Reporter
18
19
20
21
22
23
24
25